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**UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA,
OAKLAND DIVISION**

SEAN L. GILBERT, et. al.

Plaintiffs,

v.

BANK OF AMERICA, N.A.,
et. al.,

Defendants.

) Case No. CV-13-01171-JSW

) Complaint filed February 11, 2013

) Trial Date:

) Pre-Trial Date:

) Discovery Cut-Off:

)

) **Class Action**

) **PLAINTIFFS' OPPOSITION TO**

) **DEFENDANTS' ADMINISTRATIVE**

) **MOTION TO SEAL DOCUMENTS**

) Hearing Date:

) Department 5

) Hon. Jeffrey S. White, District Judge

TO EACH PARTY AND THEIR ATTORNEY OF RECORD:

Plaintiffs Sean L. Gilbert, Keeya Malone, Kimberly Bilbrew and Charmaine B.

Aquino respectfully submits these points and authorities and argument in opposition to

1 Defendants' administrative motion to seal certain documents. (Doc. 245.) Plaintiffs refer
2 to the MoneyMutual Defendants as "Selling Source."

3 Defendants seek to seal Docs. 228-2, 228-5, 228-6 and 237-2. The motion should
4 be denied because none of these records contain material that is so confidential or
5 proprietary that public access should be denied. Local Rule 79-5 (d) (1) (A) provides that
6 the existence of a "stipulation or protective order that allows a party to designate certain
7 documents as confidential is not sufficient to establish that a document, or portions
8 thereof, are sealable." Instead, Defendants must establish good cause to seal these
9 documents. As Defendants put it, they are required to make a "particularized showing"
10 under the "good cause" standard of Rule 26(c). (Doc. 245-3, p. 3:3-5.)

11
12 Defendants claim the documents contain "commercially sensitive information,
13 which if generally known would harm the MoneyMutual Defendants' business."
14 Defendants also claim the information could be used by Defendants' competitors to
15 approach Defendants' customers and undercut the prices to gain a competitive advantage.
16 Defendants also claim disclosure could damage customer relationships if one customer
17 felt it was getting less favorable consideration than another customer. However, the
18 evidence to support these contentions is conclusory and lacking any substance.

19
20 The Madsen declaration (Doc. 245-2) offered by Defendants does not identify any
21 "competitors" or even establish that such exists. The declaration does not establish that
22 any of the lenders disclosed in the documents exist anymore either. In fact, there is no
23 evidence in the declaration that Defendants even continue to do business with these
24 lenders, all of whom are illegal. All of these lenders have been shown (in the moving
25 papers for class certification) to be unlicensed (Doc. 227-1, ¶ 2) Therefore, these
26 unidentified competitors would not be able to approach these lenders which do not exist
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28

1 anymore and undercut any pricing. Moreover, even if a lender still existed, it would be
2 able to approach a competing lead service and disclose Defendants' pricing in order to
3 strike a better deal. Defendants do not cite any authority that a supplier's pricing
4 structure, which is readily disclosed to actual or potential buyers and which can thereafter
5 be shared with anyone, is something confidential.
6

7 **Doc. 228-2** is a redacted printout of a spreadsheet that states information about
8 class members' loan applications including the date the class member filled out an online
9 loan application on a Selling Source affiliated website (including Moneymutual as
10 reflected in column 6), the name of the lender or lender related company that purchased
11 the lead, a code that identifies the marketing program but which would be meaningless to
12 the public, a number which is how much money the lender paid for the lead, a five digit
13 number that is also meaningless to the public, the website where the class member
14 applied for the loan, and the name of the company that owns or controls the website.
15

16 None of this information is sensitive or confidential. Each class member would
17 know the date he applied for a loan, as well as the website where he applied. The name of
18 the company associated with the website is not a trade secret or confidential and could be
19 obtained by a class member through conventional research on the Internet. The amount
20 of money paid for the leads (or at least the price range) is something already in the public
21 record. (Doc. 176, ¶ 115; Doc 227, p. 8:14-18.) Moreover, the document only reflects
22 transactions that happened on March 6, 2012, almost four years ago. There is no evidence
23 such stale information would be of any use to competitors of Selling Source, if they even
24 exist.
25

26 **Doc. 228-5 and 228-6** are examples of the lead purchase insertion orders, which
27 are the agreements by which lenders purchased completed loan applications (i.e., leads)
28

1 from Selling Source. While the most recent agreement is dated March 5, 2014, most of
2 the agreements date back to 2011-2013 and one dates back to December 2009. Thus,
3 none of the information is “current” or even close to current. The documents include
4 contact information for Selling Source employees (business addresses) and the lender’s
5 employees or agents (again apparently business addresses). There is nothing confidential
6 about that information. The documents also reflect the “qualifications” to make the leads
7 suitable for the lenders, including in which states potential borrowers must or must not
8 reside.
9

10 To some extent, this “targeting data” might be considered sensitive information by
11 the lenders, but the lenders are not making the motion to seal. Moreover, there is no
12 evidence in the form of a declaration from any lender claiming the information is
13 sensitive. In fact, as stated above, there is no evidence the lenders even exist anymore.
14 Finally, as stated above, since all of these lenders have been shown to be unlicensed and
15 therefore illegal, there is no public interest in keeping the identity of the illegal lenders
16 confidential. It should be noted that some of the owners of these lenders were previously
17 Defendants this lawsuit (until arbitration was compelled) and they never argued in this
18 Court that the lenders were licensed or the loans were legal under California law. Nor
19 have the Selling Source Defendants made such an argument. Finally, these documents
20 do disclose the price paid per lead, but as stated earlier that information is already in the
21 public record.
22
23

24 **Doc. 237-2** is a spreadsheet showing Plaintiff Malone’s attempts to procure a loan
25 using Selling Source websites. The information includes her name, email address, city,
26 state and zip code of residence, and the IP address of the computer or device she used to
27 access the Internet. None of that is sensitive information and, in any event, it was
28

1 disclosed by Ms. Malone. The rest of the document is the name of the company that owns
2 the website she visited, and a notation whether the loan was “completed” or “failed.”
3 Malone already knew these things before the documents were disclosed so they cannot be
4 considered to be confidential.

5
6 In summary, the documents do contain confidential or sensitive information in
7 light of these facts: some of the information is already in the public record, some of the
8 information is comprised of names and business addresses for witnesses and participants,
9 and some of the information is quite old and therefore stale. Finally, there is no showing
10 by Defendants that they are currently doing business with any of the illegal lenders so
11 there is no “on-going” business that would be undermined if the documents were not
12 sealed.

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14 DATED: January 12, 2016

15 Respectfully submitted,

16 By /s/ Jeffrey Wilens

17 JEFFREY WILENS
18 Attorney for Plaintiffs
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